IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8768 of 1992

with

CIVIL APPLICATION No 6481 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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G S R T CORPORATOIN

Versus

NATHA NURMAMAD SUMRA

Appearance:

1. Special Civil Application No. 8768 of 1992

MR HARDIK C RAWAL for Petitioner No. 1

MR SN SHELAT for Petitioner No. 1

MR RV DESAI for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 04/05/2002

COMMON ORAL JUDGEMENT

#. Heard Mr.Hardik C. Rawal, learned advocate appearing on behalf of the petitioner - Corporation and Mr.R.V.Desai, learned advocate for respondent workman.

#. The petitioner Corporation has challenged the award passed by the Labour Court, Junagadh in Reference No.687 / 1990 [Old Ref (IC) No.1189 / 1986] dated 7th February, 1992, wherein the labour court has set aside the dismissal order dated 18th July, 1984 and granted reinstatement with continuity of service without backwages of the interim period and awarded punishment of stoppage of one increment with cumulative effect.

#. This Court, at the time of issuing RULE, has not stayed the direction as regards reinstatement in service and interim relief on this count has been refused by order dated 12th February, 1993. Therefore, in pursuance of the order passed by this Court on 12th February, 1993, the respondent workman has been reinstated in service by the petitioner Corporation. This fact has not been disputed by either side before this Court.

#. Learned advocate Mr.H.C.Rawal on behalf of the petitioner Corporation has submitted that there was serious allegations made against the respondent workman as to reissuance of the tickets and on that basis, chargesheet was served and ultimately the respondent workman was dismissed from service on 18th July, 1984. Mr.Rawal, learned advocate has also submitted that past record is also bad and he committed seven misconducts in past which were of similar in nature. He has also submitted that the labour court has in terms come to the conclusion in para-13 of the award that the misconduct levelled against the respondent workman is found to be proved and defence which was raised by the respondent workman has been rejected by the labour court. Therefore, Mr.Rawal, learned advocate has submitted that in such gross case of reissuance of the tickets, reinstatement cannot be granted and the labour court has committed gross error in granting reinstatement to the respondent workman. Mr.Rawal, learned advocate has also submitted that the labour court has exercised the powers under Section 11-A of the Industrial Disputes Act, 1947 showing over sympathy in case of the respondent and therefore, award in question requires to be interfered with by this Court. However, he alternatively submitted that the labour court has not applied its mind in respect of the gravity of the misconduct which was serious in nature and only awarded punishment of stoppage of one increment with cumulative effect and therefore, for such serious misconduct, some severe punishment requires to be

inflicted on the respondent workman and this aspect has been absolutely overlooked by the labour court. It is also submitted that merely denial of the backwages of the interim period, cannot be said to be sufficient punishment against such proved serious misconduct. Therefore, submission of the petitioner that the labour court has committed gross error in granting the relief in favour of the respondent workman.

#. Learned advocate Mr.R.V.Desai on behalf of the respondent workman has submitted that the labour court has rightly exercised the powers under Section 11-A of the Industrial Disputes Act, 1947. He has also submitted that the labour court has considered both the aspects of gravity of misconduct and the past record of the workman and the labour court has ultimately come to the conclusion that punishment of dismissal is harsh and unjustified and the labour court has taken care to impose punishment of stoppage of one increment with cumulative effect and therefore, no error has been committed by the labour court. However, he alternatively submits that if at this Court feels that some more punishment requires to be imposed on the respondent workman, in that case, this Court may while exercising the discretionary powers impose some appropriate punishment on the respondent workman. Mr.Desai, learned advocate also submits that the respondent workman has already been reinstated by the petitioner Corporation in service as no stay has been granted by this Court and interim relief staying the impugned award is refused by this Court. He also submits that the respondent workman has been working with the petitioner Corporation since 1993 and after nine years, if the restatement is disturbed by this Court, it will not only adversely affect the respondent workman but also his family will have to suffer. He also submits that in such situation, from the date of reinstatement in pursuance of the award, there is nothing adverse has been pointed out by the petitioner Corporation against the respondent workman. Therefore, Mr.Desai, learned advocate submits that if some punishment will be imposed on the respondent workman, will meet the ends of justice.

#. I have considered rival contentions and submissions of the learned advocates for the parties. It is pertinent to note that most of the facts are not disputed between the parties. The misconduct committed by the respondent workman is discussed in detail at para-13 of the award by the labour court. It has come on record that the labour court has come to the conclusion that alleged misconduct of reissuance of the tickets is proved. However, it transpires that the labour court has

considered past record which is discussed in para-14 of the award, wherein the labour court has come to the conclusion that looking to the fact that earlier so far the past record is concerned, no such default of reissuance of tickets has been committed by the workman and therefore, considering this fact, the labour Court has come to the conclusion that punishment of dismissal is harsh and unjustified. Therefore, the labour court has considered that denial of backwages of the interim period and stoppage of one increment with cumulative effect would be just and appropriate punishment.

#. This Court has perused the entire award impugned before this Court. However, one of the most important aspects which appeals to this Court is that the workman has been reinstated in service and the workman has been working with the petitioner Corporation since 1993. It is also pertinent to note that nothing adverse against the respondent workman after his reinstatement in service, has been pointed out by the petitioner Corporation. Therefore, in such situation, the observations and principles laid down by the Apex Court in case of USMAN MIYA MALEK reported in 2001 [1] LLJ 180 are very relevant and important. In the case before the Apex Court referred above, wherein the Apex Court has considered similar aspect that though it was serious case before the Apex Court but meanwhile when the respondent workman was reinstated in service, the Apex Court thought it fit not to disturb reinstatement but the Apex Court has modified the award. Therefore, very similar situation is found in the case on hands. In the instant case also, the respondent workman has been reinstated in service since last 9 years as interim relief of stay against the impugned award has been refused by this Court at the relevant time. Therefore, considering all these aspects and the total length of service not less than 25 years put in by the respondent workman, in view of this Court, if some proper punishment is awarded by this Court on the respondent workman, will meet the ends of justice between the parties. Therefore, according to my opinion, looking to the gravity of the misconduct committed by the respondent workman and his past record, so also the length of service as well as reinstatement of the workman from 1993, this Court considers it fit to enhance the punishment awarded by the labour court to meet the ends of justice and hence, the award in question in respect of the punishment requires to be modified suitably.

#. In the result, present petition is allowed partly. The award passed by the labour court, Junagadh in Reference No.687/1998 [Old No.1189 / 86] dated 7th

February, 1992 is modified to the effect that the respondent - workman concerned has to suffer punishment of stoppage of five increments with cumulative effect instead of stoppage of one increment with cumulative effect. Rest of the directions issued by the labour court granting reinstatement with continuity of service remain intact and not disturbed by this Court. Rule is made absolute accordingly.

So far, Civil Application NO.6481 / 2000 is concerned, it is observed that today, this Court has disposed of the main matter - SCA No.8768 / 1992 confirming the award of reinstatement with continuity of service without backwages of the interim period with punishment of stoppage of five increments with cumulative effect instead of stoppage of one increment with cumulative effect. Therefore, it is directed to the Corporation opponent in this Civil Application to fix the salary of the workman applicant herein in terms of the order passed by this Court in the main petition Special Civil Application No.8768 / 1992.

In view of above observations and directions, present Civil Application also stands disposed of accordingly. Notice discharged with no order as to costs.

Date : 4-5-2002 [H.K.Rathod, J.]

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